

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

RICARDO KENNY,

Plaintiff,

v.

CIVIL ACTION NO 08-1493
Magistrate Judge Bissoon

C/O NEWHOUSE , et al.,

Defendants.

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

I. RECOMMENDATION

Because Plaintiff has failed to sign an authorization which would allow the institutional account officer to deduct a partial filing fee, it is respectfully recommended that this action be dismissed, without prejudice. Plaintiff should be permitted to re-file this action within the applicable statute of limitations period by paying the full filing fee of \$350.00.

II. REPORT

Plaintiff, Ricardo Kenny, an inmate confined under judgment of sentence at the State Correctional Institution at Fayette, LaBelle, Pennsylvania, filed this lawsuit under the Civil Rights Act of 1871, 42 U.S.C. §1983, against C/O Newhouse and others, who are the Defendants in this action. Together with the Complaint, Plaintiff filed an application for leave to proceed in forma pauperis.

The Prison Litigation Reform Act of 1996, 28 U.S.C. §1915(b), as amended on April 26, 1996, requires that prisoners who cannot pay the full filing fee, immediately submit an initial partial filing fee and the balance in installment payments. Consistent with that Act, the Court entered an Order (Doc. 5) on December 15, 2008, that:

1. Computed the proper initial partial filing fee and informed Plaintiff of that amount;
2. Directed the Plaintiff to either:
 - a. sign an authorization which would allow the institutional account officer to deduct the partial filing fee and pay it into the court; or
 - b. sign a form indicating that, whether for financial reasons or otherwise, he chose to withdraw the action;
3. Instructed Plaintiff to return the signed authorization or notice of withdrawal within twenty (20) days.

Plaintiff has not returned a signed notice of the withdrawal of this action. Neither has he returned a signed authorization which would allow the institutional account officer to deduct the partial filing fee and pay it into the Court. Because the Court will not direct the prison to withdraw money from the Plaintiff's institutional account and pay it into the Court until Plaintiff authorizes such withdrawal, the initial partial filing fee in this case will never be paid.

Plaintiff's refusal to comply with the directions contained in the Court's December 5, 2008 Order makes it impossible for the Court to comply with Congress's amendments to the law regulating the manner in which in forma pauperis prison litigation is to be administered. Because Plaintiff has not complied with this Court's Order, it must be concluded that he no longer desires to maintain this action.

It is respectfully recommended that Plaintiff's application to proceed in forma pauperis be denied, and that this action be dismissed, without prejudice. Plaintiff should be permitted to re-file this action within the applicable statute of limitations period by paying the full filing fee of \$350.00.

In accordance with the Magistrate's Act, 28 U.S.C. § 636 (b)(1)(B) and (C), and Rule 72.1.4 (B) of the Local Rules for Magistrates, objections to this Report and Recommendation are due by February 9, 2009.

January 22, 2009

s/Cathy Bissoon
Cathy Bissoon
United States Magistrate Judge

cc:
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